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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/769,379	01/30/2004	Paul E. Thomas	15838-292003	7898

7590 05/18/2005  
Tredegar Film Products Corporation  
1100 Boulders Parkway  
Richmond, VA 23225

EXAMINER

WATKINS III, WILLIAM P

ART UNIT PAPER NUMBER

1772

DATE MAILED: 05/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

ML

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/769,379	THOMAS, PAUL E.	
	<b>Examiner</b>	<b>Art Unit</b>	
	William P. Watkins III	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1-28-05; 5-3-04</u> . | 6) <input type="checkbox"/> Other: _____  |

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#### DETAILED ACTION

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 57, 63, 64 and 66 of copending Application No. 10/396,028. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims are broader than the claims of the '028 application and thus obvious over them. As both applications have a common effective filing date, only a one way showing of obviousness is needed.

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This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

3. Claims 3, 4, 5, 9, 10, 11, 15, 16, 17 and 20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 6,582,798 B2 in view of Tsuji et al. (U.S. 6,090,089), Murakami et al. (U.S. 5,268,213) and Sorensen (U.S. 4,327,730).

The claims of the '798 patent teach a top sheet for an absorbent article with land areas defined by cells with microridges on the lands. Tsuji et al. teach the elevation of lands in the transverse direction of the sheet, which form liquid passageways, in order to prevent unpleasant contact with the skin (abstract, element 11, Figures 1-3). Murakami et al. teach the use of passageways formed by ridges in the longitudinal or machine direction of the top sheet in order to better diffuse bodily fluids (abstract, Figure 5, col. 1, line 65 through col. 2, line 5). Sorensen teaches the use of elevations that are at least from about 4 to 90 microns in height (col. 4, lines 45-55) to provide a pleasant feel against the skin (col. 4, lines 25-30). The instant invention claims a

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top sheet with raised lands in the machine or stroking direction that are 15 to 145 microns in height with a microtexture on the lands. It would have been obvious to one of ordinary skill in the art to have placed the ridges of Tsuji et al. in the machine direction to better control fluid flow because of the teachings of Murakami et al. and to have made them with a height of 4 to 90 microns in order to have a pleasant fabric feel against the skin because of the teachings of Sorensen. It further would have been obvious to have raised the machine direction land areas of the '798 patent to form raised land areas in order to have an increased cloth like and pleasant feel and to channel fluid in the machine direction because of the teachings of Tsuji et al., Murakami et al. and Sorensen. The modified claims of the '798 patent render the instant claims obvious. Only a one way showing of obviousness is needed as the instant application and the '798 patent have a common effective filing date.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the

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art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-2, 6-8, 12-14, 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsuji et al. (U.S. 6,090,089) in view of Murakami et al. (U.S. 5,268,213) and Sorensen (U.S. 4,327,730).

Tsuji et al. teach the elevation of lands in the transverse direction of the sheet, which form liquid passageways, in order to prevent unpleasant contact with the skin (abstract, element 11, Figures 1-3). Murakami et al. teach the use of passageways formed by ridges in the longitudinal or machine direction of the top sheet in order to better diffuse bodily fluids (abstract, Figure 5, col. 1, line 65 through col. 2, line 5). Sorensen teaches the use of elevations that are at least from about 4 to 90 microns in height (col. 4, lines 45-55) to provide a pleasant feel against the skin (col. 4, lines 25-30). The instant invention claims a top sheet with raised lands in the machine or stroking direction that are 15 to 145 microns in height. It would have been obvious to one of ordinary skill in the art to have placed the ridges of Tsuji et al. in the machine direction to better control fluid flow because of the teachings of Murakami et al. and to have made them with a height of 4 to 90

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microns in order to have a pleasant fabric feel against the skin because of the teachings of Sorensen. The combination of the references has a structure that is the same or similar to that taught in the instant specification as giving a Silky Tactile Impression Rating of about 5 or less (page 10, lines 5-15). It is thus taken as meeting the Silky Tactile Impression Rating limitation of the instant claims.

6. Claims 3-5, 9-11, 15-17 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsuji et al. (U.S. 6,090,089) in view of Murakami et al. (U.S. 5,268,213) and Sorensen (U.S. 4,327,730) as applied to claims 1-2, 6-8, 12-14, 18-19 above, and further in view of Faelten (U.S. 2,304,632).

Faelten teaches the use of ridges or waves raised in a surface to provide an attractive finish and good skin contact (col. 2, lines 35-45). The instant invention claims ridges on a top sheet with raised machine direction lands. It would have been obvious to one of ordinary skill in the art to have placed small ridges on the top sheet of Tsuji et al. as modified above in order to enhance the appearance and skin contact because of the teachings of Faelten. The combination of the references has a structure that is the same or similar to that taught in the

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instant specification as giving a Silky Tactile Impression Rating of about 5 or less (page 10, lines 20-30). It is thus taken as meeting the Silky Tactile Impression Rating limitation of the instant claims.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Watkins III whose telephone number is 571-272-1503. The examiner works an increased flex time schedule, but can normally be reached Monday through Friday, 11:30 A.M. through 8:00 P.M. Eastern Time. The examiner returns all calls within one business day unless an extended absence is noted on his voice mail greeting.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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WW/ww

May 13, 2005

A handwritten signature in black ink, appearing to read "William P. Watkins III".

**WILLIAM P. WATKINS III  
PRIMARY EXAMINER**